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35           **UNITED STATES DISTRICT COURT**  
36           **NORTHERN DISTRICT OF CALIFORNIA**

37          JILL LEOVY, individually, and on behalf of  
38          all others similarly situated,

39           Plaintiff,

40           vs.

41          GOOGLE LLC,

42           Defendant.

43          Case No.: 5:23-cv-03440-EKL

44           **CLASS ACTION**

45           **RULE 26(f) JOINT CASE MANAGEMENT  
46           STATEMENT**

47          Complaint Filed: July 11, 2023  
48          FAC Filed: January 5, 2024  
49          SAC Filed: June 27, 2024

1 Plaintiff Jill Leovy (“Plaintiff” or “Ms. Leovy”) and Defendant Google LLC (“Defendant” or  
 2 “Google”) (collectively, the “Parties”) submit this Joint Case Management Statement pursuant to  
 3 Fed. R. Civ. P. 26(f), Civil Local Rule 16-9, and the Standing Order for Judge Eumi K. Lee.

4 **1. Jurisdiction and Service**

5 This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C § 1331,  
 6 because this case arises under the Copyright Act, 17 U.S.C. § 501. No issues exist regarding personal  
 7 jurisdiction or venue. No Parties remain to be served.

8 **2. Facts**

9 **Plaintiff’s Position:** To build its AI Products, Google took copyrighted works from authors,  
 10 creators, and artists around the nation without notice, consent, or compensation, copying and  
 11 otherwise using them in violation of the federal Copyright Act. (Second Amended Complaint  
 12 (“SAC”), ¶¶ 2-6, 23-34) Google’s AI Product Bard, now known as Gemini, and likely other valuable  
 13 Google AI Products were built and run on these copyrighted works and could not exist without  
 14 them. *Id.* ¶13. Ms. Leovy is a New York Times best-selling author, former longtime reporter for the  
 15 LA Times, and one of the victims of Google’s mass theft/infringement of copyrighted works. *Id.* ¶  
 16 In her case, Google illegally took and reproduced her award-winning non-fiction book  
 17 *Ghettoside: A True Story of Murder in America*, reflecting novel insights not available anywhere  
 18 else gleamed from her decades-long and dangerous work embedded in a homicide crime unit. *Id.* ¶  
 19 She filed this action individually and on behalf of all other similarly situated copyrighted authors  
 20 and creators (“Users” or “Class Members”).

21 Google raises below express or implied consent as a defense, but it is a matter of public record  
 22 that no one consented to its massive infringement of intellectually property. Similar claims are  
 23 currently being pursued by authors, cartoonists, illustrators, journalists, and other affected creators  
 24 across the nation against companies like Google, OpenAI, and Microsoft, which each exploited  
 25 copyrighted works in secret while competing for dominance in the new AI economy. Google’s  
 26 failure to license these valuable works in disregard of copyright law has outraged the public (¶¶ 8,  
 27 9, 52, 64-71, 73-76), and for good reason: the AI Products compete with and ultimately are expected  
 28

1 to eliminate the livelihoods of the very creators from whom Google stole, and without whose works  
2 profitable products like Gemini could not exist. *Id.*, ¶¶ 24-27, 37-46.

3 For that and other reasons, Google’s argument that their surreptitious theft and infringement  
4 of millions of works constitutes “fair use” will also fail. “Groundbreaking technology,” as Google  
5 puts it, is no excuse to violate the law, as the FTC has explicitly warned companies like Google:  
6 “machine learning is no excuse to break the law” and “[t]he data . . . use[d] . . . must be lawfully  
7 collected.” *Id.*, ¶ 5. “Fair use” also has never sanctioned infringement of entire works for commercial  
8 purposes that detrimentally affects creators and copyright holders. Defendant’s unauthorized use  
9 also does not fall within any protected purposes under 17 U.S.C. 107.

10 Finally, Google relies on *Schneider* below to diminish the prospect of class certification for  
11 Ms. Leovy’s claim, but the Court there was careful to note that certification in a copyright case is  
12 not foreclosed or otherwise per se “impossible.” *Schneider v. YouTube, LLC*, 674 F. Supp. 3d 704,  
13 717 (N.D. Cal. 2023). Google’s position also overlooks multiple certified copyright cases within  
14 the Ninth Circuit alone. *Risto v. Screen Actors Guild-American Fed’n of TV & Radio Artists*, 2020  
15 U.S. Dist. LEXIS 168372, \*15 (C.D. Cal. Sep. 14, 2020) (certified class of “[a]ll non-featured  
16 musicians and non-featured vocalists, their agents, successors in interest, assigns, heirs, executors,  
17 trustees, and administrators, entitled to royalties under the Copyright Act (17 U.S.C. § 114 (g)(2)(B-  
18 C) after July 22, 2013”); *Leiber v. Bertelsmann AG (In re Napster, Inc. Copyright Litig.)*, 2005 U.S.  
19 Dist. LEXIS 11498, \*44 (N.D. Cal. May 31, 2005) (certified class of “[a]ll music publisher-  
20 principals of The Harry Fox Agency that owned or controlled at least one copyrighted musical work  
21 at the time that it was made available without their permission through the Napster service on or  
22 after October 30, 2000.”)

23 **Defendant’s Position:** Generative AI is an important and groundbreaking technology that  
24 promises to revolutionize a wide range of endeavors. Plaintiff’s complaint challenges the process  
25 of training AI models, which involves exposing the models to enormous amounts of data so that  
26 they can learn to generate their own information. Plaintiff does not allege that the output of any  
27 Google product has displayed, distributed, or otherwise infringed her copyright. And Plaintiff’s  
28 claim for copyright infringement based on training is meritless.

1       That claim raises questions of express and implied license and fair use. Facts regarding  
2 copyright ownership, registration, use, timing, and the existence and availability of damages will  
3 also require exploration. Importantly, no class can be certified here. Many courts have recognized  
4 that copyright claims are “poor candidates for class-action treatment.” *Schneider v. YouTube LLC*,  
5 2023 WL 3605981, at \*6 (N.D. Cal. May 22, 2023) (denying certification of copyright class). Those  
6 concerns are magnified here, where Plaintiff, asserting a single copyrighted work, seeks to represent  
7 a sprawling class of all U.S. copyright owners whose works were allegedly used in training Google’s  
8 AI products.

9       Rather than a statement on the status of the case, Plaintiff has chosen to submit extensive  
10 legal argument. Plaintiff’s arguments are as meritless as they are misplaced, and Defendant will  
11 refute them in the proper setting.

12 **3. Legal Issues**

13       **Plaintiff’s Position:** Ms. Leovy asserts the claims on behalf of herself and a class of similarly  
14 situated persons for violation of the Copyright Act. Ms. Leovy seeks to certify the classes under  
15 Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure, regarding, but not  
16 limited to, the following legal issues:

- 17       a)      Whether Ms. Leovy owned copyright in her book that Google illegally used to build  
18                   AI Products;
- 19       b)      Whether Defendant’s conduct constitutes an infringement of the copyrights held by  
20                   Ms. Leovy and the Class in their respective works;
- 21       c)      Whether Defendant’s reproduction of the copyrighted works constitutes copyright  
22                   infringement;
- 23       d)      Whether Defendant’s copying and/or reproduction of the copyrighted works  
24                   constitutes fair use;
- 25       e)      Whether Defendant’s violation of Class’ and Ms. Leovy’s exclusive rights under  
26                   copyright law entitles them to damages, including statutory damages, and the amount  
27                   of statutory damages;
- 28       f)      Whether Defendant acted willfully with respect to the copyright infringements.

1 At the appropriate time, the parties will brief their respective positions as to the requirements  
2 under Rule 23.

3 **Defendant's Position:** Defendant identifies the following legal issues in addition to those  
4 raised by Plaintiff above. As raised in the motion to dismiss, the Parties dispute: (a) whether Plaintiff  
5 has adequately alleged entitlement to injunctive relief or to disgorgement; and (b) whether the  
6 Complaint complies with Rule 8's requirement of a "short and plain" statement.

7 Further contested legal issues that are likely to be raised include: (a) whether a class can be  
8 certified under Rule 23; (b) whether Plaintiff can demonstrate registration, ownership, and validity  
9 of the alleged copyright; (c) whether the allegedly infringed material consists of creative expression  
10 or uncopyrightable facts; (d) whether there is substantial similarity between Plaintiff's copyrighted  
11 work and the accused infringement; (e) whether Plaintiff's agreements with Defendant and others  
12 authorize the alleged actions; (f) whether doctrines such as fair use or de minimis copying apply to  
13 the copyright claim; and (g) whether this case should be consolidated with the related case, *Zhang*,  
14 *et al. v. Google LLC, et al.*, No. 5:24-cv-02531-EKL.

15 **4. Motions**

16 **(a) Prior and Pending Motions**

17 *Motions to Dismiss.* Defendant filed a motion to dismiss the original complaint, which was  
18 rendered moot by Ms. Leovy's filing of an amended complaint (ECF No. 28). On February 9, 2024,  
19 Defendant moved to dismiss the First Amended Complaint. *See* ECF Nos. 33, 34. The Court granted  
20 that motion under Rule 8, but permitted plaintiffs leave to amend. ECF No. 46 at 1. After Ms. Leovy  
21 filed a Second Amended Complaint asserting a claim for direct copyright infringement, Defendant  
22 filed another motion to dismiss (ECF No. 55), which Ms. Leovy timely opposed (ECF No. 61), and  
23 which is set for hearing on December 18, 2024.

24 *Related Case Motions.* Defendant moved to relate this case to *Zhang v. Google*. *See* ECF Nos.  
25 42, 49. The Court related the cases on July 23, 2024. ECF No. 51; *see also* ECF Nos. 53-54, 56, 59  
26 (reconsideration denied).

1                   **(b)     Anticipated Motions**

2                   At a later time, the Parties anticipate briefing Ms. Leovy's motion for class certification. The  
3                   Parties reserve their rights to file motions for summary judgment, and *Daubert* motions (as desired).  
4                   Closer to trial, the Parties anticipate filing pre-trial motions as appropriate or necessary depending  
5                   on the progression of this litigation.

6                   Defendant may move to consolidate this case with the related case, *Zhang v. Google*.

7                   **Plaintiff's Position on Consolidation:** Ms. Leovy intends to oppose Defendant's motion to  
8                   consolidate because the two cases involve different data sets, different AI products, and different  
9                   language models. To the extent any discovery overlaps, the parties will work collaboratively to  
10                  avoid unnecessary duplication and to realize other efficiencies in the interest of judicial economy,  
11                  and revisit the prospect of consolidation as the cases take further shape.

12                  **Defendant's Position on Consolidation:** From the operative pleadings, the putative class in  
13                  *Leovy* subsumes the putative class in *Zhang*. That is, the *Zhang* Plaintiffs, as well as members of the  
14                  putative class in *Zhang*, are also members of the putative class in *Leovy*. Plaintiff cannot plausibly  
15                  dispute that the complaint in *Leovy* covers the allegations and the putative class in *Zhang*.  
16                  Consolidation in these circumstances is routine to promote efficiency and avoid duplication.

17                  **5.     Amendment of Pleadings**

18                  Consistent with the Court's Standing Order, the Parties propose 60 days after the initial case  
19                  management conference as the deadline to move to amend pleadings or add parties without leave of  
20                  court. Beyond that, Ms. Leovy reserves the right to seek leave to amend the complaint, or add parties  
21                  or claims, in the event that discovery leads to evidence necessitating amendment or motions to add  
22                  parties or claims. Defendant believes that, if the cases are consolidated, it may make sense to have  
23                  a consolidated complaint. The Parties do not anticipate any motions regarding transferring  
24                  venue/remand.

25                  **6.     Evidence Preservation**

26                  The Parties have reviewed this District's Guidelines for the Discovery of Electronically  
27                  Stored Information ("ESI Guidelines") and have taken responsible and necessary steps to comply  
28                  with their obligations to preserve evidence relevant to the issues reasonably evident in this action.

1 The Parties have begun conferring on several issues regarding preservation, and intend to meet and  
2 confer further regarding electronic discovery issues pursuant to Fed. R. Civ. P. 26(f) regarding what  
3 reasonable and proportionate steps are to be taken to preserve evidence relevant to the issues  
4 reasonably evident in this action.

5 **7. Disclosures**

6 Pursuant to the Court's Order of May 14, 2024 (ECF No. 40), the Parties intend to serve their  
7 initial disclosures by no later than one week prior to the initial case management conference.

8 **8. Discovery**

9 **(a) Status and Scope of Discovery**

10 No discovery has taken place to date. The Parties intend to begin discovery shortly and intend  
11 to take written discovery, depositions, third party discovery, and expert discovery. The Parties are  
12 conferring on a stipulated ESI protocol and protective order governing the confidentiality of  
13 materials in this action. The Parties do not anticipate that discovery will be bifurcated.

14 **(b) Discovery Modifications**

15 The Parties believe that the default limitations on discovery set out in the Federal Rules should  
16 apply and that the Parties should work together to reach agreement on a mutual expansion if one  
17 becomes necessary. The Parties further believe that discovery should be coordinated in the two  
18 related cases, even if they are not consolidated.

19 **(c) Discovery Plan**

20 The Parties met and conferred and have agreed to submit a supplement with their proposed  
21 schedule, to include proposed cut-off dates for both fact and expert discovery, at least two weeks in  
22 advance of the initial case management conference in this case once that conference has been set.

23 **(d) Discovery Disputes**

24 The Parties have not yet identified any discovery disputes.

25 **9. Class Actions**

26 All attorneys of record have reviewed the Procedural Guidance for Class Action Settlements.

27 **Plaintiff's Position:** Ms. Leovy brings this action as a class action pursuant to Federal Rules  
28 of Civil Procedure 23, subdivisions (b)(2), (b)(3), and (c)(4) on behalf of herself and all others

1 similarly situated included in the putative class. Ms. Leovy intends to move for class certification  
 2 by the date approved by the Court. The parties will submit a proposed schedule addendum to this  
 3 statement, no later than two weeks prior to the scheduled initial case management conference.

4       **Defendant's Position:** Defendant intends to oppose class certification.

5       **10. Related Cases**

6       On July 23, 2024, this case was related to the following matter before the Northern District  
 7 of California: Case No. 24-cv-02531-EJD, *Zhang v. Google LLC*. The Parties are unaware of any  
 8 other related cases at this time. Defendant may bring a motion on whether the related cases should  
 9 be consolidated, which Ms. Leovy expects to oppose. *See p. 5 above (Anticipated Motions,*  
 10 *Plaintiff's Position).*

11      **11. Relief**

12       **Plaintiff's Position:** Ms. Leovy seeks the following relief:

- 13       1. Compensatory/Statutory damages: Ms. Leovy seeks remedies authorized by 17  
           U.S.C. § 504 (allowing recovery of actual damages and infringer's profits, or  
           alternatively, statutory damages).
- 14       2. Injunctive relief;
- 15       3. Reasonable attorneys' fees, costs, and expenses; pre-/post-judgment interest; and
- 16       4. any further relief the Court deems just and proper.

17       Defendant notes it will seek prevailing party attorney's fees under 17 U.S.C. § 505, but that  
 18 would be unsuccessful. This case raises an important issue of great public concern in the new AI  
 19 economy and these copyright questions are reasonably being litigated in good faith in courts across  
 20 the nation. *See King v. IM Glob.,* No. CV 15-09646 SJO (AGR), 2017 U.S. Dist. LEXIS 112651,  
 21 \*10 (C.D. Cal. Jan. 25, 2017) (denying defendant prevailing attorney's fees where the award "would  
 22 not further the purposes of the Copyright Act" because plaintiff's claims were not frivolous or  
 23 objectively unreasonable.)

24       **Defendant's Position:** Defendant denies that Plaintiff is entitled to any relief. Certain  
 25 requests for relief are the subject of a pending motion to dismiss. Defendant expects to seek  
 26 prevailing party attorneys' fees for Plaintiff's copyright claim pursuant to 17 U.S.C. § 505.

1           **12. Settlement and ADR**

2           The Parties intend to participate in private mediation; the Parties are continuing to confer as  
3           to when it would be most beneficial to hold a mediation.

4           **13. Other References**

5           The Parties do not believe this case is presently suitable for reference to binding arbitration,  
6           a special master, or the Judicial Panel on Multidistrict Litigation.

7           **14. Narrowing of Issues**

8           By agreement of the Parties, Ms. Leovy voluntarily dismissed two of the original defendants  
9           without prejudice (Alphabet Inc. and Google DeepMind). Following the Court's ruling on a prior  
10          motion to dismiss, additional plaintiffs and claims were dropped from this case, leaving only a single  
11          claim for direct copyright infringement. The Parties do not believe there are any other issues that  
12          can be narrowed at this time. However, the Parties agree that a ruling on class certification would  
13          be most consequential to this case.

14           **15. Scheduling**

15           The Parties met and conferred and have agreed to submit a supplement with their proposed  
16          schedule no later than two weeks prior to the scheduled initial case management conference.

17           **16. Trial Estimate:**

18           Ms. Leovy has demanded a jury trial on all matters so triable.

19           **Plaintiff's Position:** Plaintiff currently estimates approximately seven (7) to ten (10) days  
20          for trial.

21           **Defendant's Position:** Defendant believes it is premature to determine the length of the trial.

22           **17. Disclosure of Non-Party Interested Entities or Persons**

23           **Plaintiff's Position:** Ms. Leovy and her Counsel are not aware of any other persons or entities  
24          (other than the parties, the class members, and the disclosed interested entities by Google) to have  
25          either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; (ii)  
26          any other kind of interest that could be substantially affected by the outcome of the proceeding.

27           **Defendant's Position:** Defendant has filed the Corporate Disclosure Statement and  
28          Certification of Interested Entities or Persons required by Civil L.R. 3-15 (ECF No. 16). Pursuant

1 to Federal Rule of Civil Procedure 7.1, Defendant Google LLC discloses the following: Google  
 2 LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded  
 3 company; no publicly traded company holds more than 10% of Alphabet Inc.'s stock. Pursuant to  
 4 Civ. L.R. 3-15, the undersigned counsel for Defendant certifies that the following listed persons,  
 5 associations of persons, firms, partnerships, corporations (including parent corporations) or other  
 6 entities (i) have a financial interest in the subject matter in controversy or in a party to the  
 7 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be  
 8 substantially affected by the outcome of this proceeding:

- 9       1.     Google LLC
- 10      2.     XXVI Holdings Inc., Holding Company of Google LLC
- 11      3.     Alphabet Inc., Holding Company of XXVI Holdings Inc.

12     **18. Professional Conduct**

13     The Parties' counsel have reviewed the Guidelines for Professional Conduct for the Northern  
 14 District of California.

15     **19. Summary of Parties, Claims, and Procedural History**

16     Per ECF No. 60, the Parties have included a short statement of the case to date:

17     **(a) Parties**

- 18       i. Plaintiff: Jill Leovy, an individual, on behalf of herself and a proposed class
- 19       ii. Defendant: Google LLC

20     **(b) Claims**

21     The sole count in this case is Direct Copyright Infringement under 17 U.S.C. § 101 *et seq.*;  
 22 and U.S. Const. Art. I, Section 8.

23     **(c) Procedural History**

Original Complaint filed	July 11, 2023
Motion to Dismiss filed	October 17, 2023
Stipulation re timing of First Amended Complaint	November 3, 2023

1	First Amended Complaint filed	January 5, 2024
2	Motion to Dismiss First Amended Complaint filed	February 9, 2024
3	Order granting Motion to Dismiss with leave to amend	June 6, 2024
4	Second Amended Complaint filed	June 27, 2024
5	Motion to Dismiss Second Amended Complaint filed	July 29, 2024
6	Hearing on the Motion to Dismiss	December 18, 2024
7	Initial Scheduling Conference	<b>To be determined</b>

9 DATED: September 16, 2024

**CLARKSON LAW FIRM, P.C.**

10 By: /s/ Yana Hart  
 11 Ryan J. Clarkson, Esq.  
 12 Yana Hart, Esq.  
 13 Tiara Avaness, Esq.

14  
*Counsel for Plaintiff and the Proposed  
 Class*

15 DATED: September 16, 2024

**WILSON SONSINI GOODRICH &  
 ROSATI  
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16 By: /s/ David H. Kramer  
 17 David H. Kramer, Esq.  
 18 Maura L. Rees, Esq.  
 19 Eric P. Tuttle, Esq.

20  
*Counsel for Defendant*

### **ATTESTATION OF FILER**

Pursuant to Civil Local Rule 5-1(i)(3), the undersigned filer hereby attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content, and have authorized the filing.

Dated: September 16, 2024

**CLARKSON LAW FIRM, P.C.**

/s/ Yana Hart  
By: Yana Hart, Esq.

*Counsel for Plaintiff and the  
Proposed Class*